IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1430 of 2005
To
FIRST APPEAL No. 1470 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER & 1 - Appellants
Versus
SANKARBHAI SHIBHAI RABARI & 1 - Respondents

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Appearance
MR S.S.SHAH, G. P. for Appellants in First Appeal Nos.1430 to 1446 of 2005.
MR J.K.SHAH, AGP, for Appellants in First Appeal Nos. 1447 to 1458 of 2005.
MR PATHIK ACHARYA, AGP, for Appellants in First Appeal Nos.1459 to 1470 of 2005.
MR AJ PATEL for respondent-claimants in First Appeal Nos. 1430 to 1464 of 2005.
MR NILESH PANDYA, for respondent-claimants in First Appeal Nos.1465 to 1470 of 2005.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 29/06/2007

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

These appeals filed under Section 54 of the Land Acquisition Act, 1894 ['The Act' for short] read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated April 19, 2004, rendered by the learned 3rd Joint Civil Judge (S.D.), Vadodara, in Land Reference Case Nos. 1503 to 1508, 1517 to 1544, 1546, 1596 to 1600 and 1605 of 1996, by which the claimants are awarded additional amount of compensation at the rate of Rs. 115.20 ps. per sq.mt. for irrigated lands and Rs.116.80 ps. per sq.mt. for non-irrigated lands, over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of RS. 4.80 ps. per sq.mt. for irrigated lands and Rs. 3.20 Ps. per sq.mt. for non-irrigated lands by four different awards dated January 31, 1995, rendered in LAQ Nos.15/93,

46/93, 22/93 & 21/93.

2. The Executive Engineer, Narmada Project Canal Construction, Division No.11, Chhani Jakatnaka, Vadodara, made four different proposals to the State Government to acquire lands of village Kapurai, Taluka: Vadodara, District: Vadodara for the public purpose of construction of canals under Narmada Canal Project. Those proposals culminated into publication of four notifications in the Official Gazette on June 24, 1993; July 15, 1993; August 26, 1993; and August 26, 1993 on the basis of which LAQ No.15/93, LAQ No.46/93, LAQ No.22/93 and LAQ No.21/93 came to be registered respectively. On submission of report by the Special Land Acquisition Officer under Section 5A(2) of the Act, declarations made under Section 6 of the Act came to be published in the Official Gazette on July 14, 1994; February 10, 1994; February 10, 1994; and July 14, 1994 in LAQ No.15/93, LAQ No.46/93, LAQ No.22/93 and LAQ

No.21/93 respectively. The interested persons in all the four cases were thereafter served with notices under Section 9 of the Act for determination of the amount of compensation payable to them. The claimants in different Land Acquisition Cases appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by different awards dated January 31, 1995 rendered in LAQ No. 15/93, LAQ No.46/93, LAQ No.22/93 and LAQ No.21/93 offered compensation to the claimants at the rate of Rs. 4.80 ps. per sq.mt. for irrigated lands and Rs. 3.20 Ps. for non-irrigated lands. In all the land acquisition cases, the claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for determination of just amount of

compensation payable to them. Accordingly, references were made to the District Court, Vadodara, where they were registered as noticed earlier. It may be mentioned that with the consent of the learned Advocates for the parties, all the Land Reference Cases were consolidated because though four different awards were rendered by the Special Land Acquisition Officer, they were bearing the same date, and the amount of compensation offered to the claimants was also the same. Before the Court, the claimants claimed compensation at the rate of Rs.200/- per sq.mt.

3. On behalf of the claimants, witness Shankerbhai Sibhai Rabari was examined at Exh.13. He produced Village Form 7/12 at Exhs.20 to 116 to indicate that the lands acquired were irrigated lands. The said witness also produced certificates issued by Warnama Group Co.op.Sales and Ginning Crashing Society Ltd., at Exhs.117 & 118 indicating sales of agricultural produces grown by the claimants to the said society, as

compensation was also claimed on yield basis. The witness further produced consent-award made by the Land Acquisition Officer relating to the lands of village Bapod, Ankol, Taluka: Vadodara at Exhs. 119 & 120 in support of the claim of the claimants that they were entitled to enhanced compensation. The witness also produced a copy of notification issued by the Government at Exh.121 to indicate that village Kapurai from which the lands were acquired in the instant cases was within the limits of Vadodara Municipal Corporation. On application being submitted by the claimants, testimony of witness Hasanbhai Gulabbhai Malek, who was then Talati-cum-Mantri, was recorded at Exh.147. The said witness produced Village Form 7/12, record of rights and map relating to the lands acquired in the instant cases at Exhs.148 to 166. The witness further produced a copy of order passed by the Government on November 1, 1994 indicating that Survey No.393/2 of village Kapurai was sold to the owner of Gas Agency at the rate of Rs. 120/- per sq.mt.

for the purpose of setting up gas godown. On behalf of the acquiring authorities, witness Pradipsinh Chhatrasinh Thakor was examined at Exh.174, whereas witness Parshotambhai Ramdas was examined at Exh.195. The said witness produced extract from the register indicating sale-deeds executed in the last five years relating to the lands of village Kapurai. Further, order dated November 1, 1994 passed by the Government allotting land admeasuring 1000 sq.mts. at the rate of Rs. 120/- per sq.mt. to the proprietor of Radhika Gas Service for the purpose of setting up gas godown was produced at Exh.139.

4. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that Exh.139 was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired from village Kapurai. In the ultimate analysis, the Reference Court has awarded additional amount of compensation to the

claimants at the rate of Rs.115.20 ps. per sq.mt. for irrigated lands and Rs.116.20 ps. per sq.mt. for non-irrigated lands by the impugned common award which has given rise to the above-numbered appeals.

5. This Court has heard Mr.J.K.Shah, learned Assistant Government Pleader for the appellants, as well as Mr.A.J.Patel, learned Counsel for the claimant/s in First Appeal Nos.1430 to 1464 of 2005, and Mr.Nilesh Pandya, learned Counsel for the claimant/s in First Appeal Nos.1465 to 1470 of 2005, at length and in great detail. This Court has also considered R & P received by the Court pursuant to order dated June 28, 2007 as well as paper-book supplied by the learned Counsel for the claimant/s in First Appeal Nos.1465 to 1470 of 2005, which includes both documentary as well as oral evidence adduced by the parties before the Reference Court.

6. There is a consensus between the learned

Advocates for the parties that Exh.139 & Exh.168 relating to disposal of land under Section 23 of the Urban Land (Ceiling & Regulation) Act, 1976 ('the Ceiling Act' for short) in favour of Proprietor of Radhika Gas Service for setting up Gas-Godown are the only relevant documents for the purpose of determining the amount of compensation payable to the claimants. In view of the consensus mentioned above, this Court proposes to consider Exh.139 & Exh.168 in detail to determine whether just amount of compensation is awarded to the claimants. Exh.168 would indicate that proprietor of Radhika Gas Service wanted to set up a Gas Godown and, therefore, applied to the Competent Authority under the Ceiling Act to allot 3796 sq.mt. from Survey No.393/2 of village Kapurai. On receipt of the said application, a District Committee under the Chairmanship of Collector, Vadodara, was constituted. The meeting of the Committee was held on August 25, 1993 and the price at which part of land bearing Survey No.393/2 should be

allotted to the proprietor of Radhika Gas Service was recommended to be Rs.120/- per sq.mt. and the Collector was requested to make recommendation to the Government accordingly. Exh.139 dated November 1, 1994 indicates that land admeasuring 1000 sq.mts. of Survey No.393/2 of village Kapurai was allotted under Section 23 of the Ceiling Act to Smt.Maliniben Amarsinh Rathva, who was proprietor of Radhika Gas Service, at the rate of Rs.120/- per sq.mt. The evidence adduced by the claimants as well as by the acquiring authorities would indicate that the land allotted to the proprietor of Radhika Gas Service, Vadodara, was adjacent to the lands acquired in the instant case. It is well settled that exemplars of small plot can be taken into consideration specially when other relevant or material evidence is not available provided adequate discount is given in that behalf. *[See: Rishi Pal Singh & Ors. v. Meerut Development Authority & Anr. (2006)3 SCC 205]*. Therefore, this Court is of the opinion that the Reference

Court did not commit any error in placing reliance on Exh.139 for the purpose of determining market value of the lands acquired in the instant cases. However, the land allotted *vide* Exh.139 was non-agricultural land and small in size in comparison to the large tracts of lands acquired in the instant cases. The said document was also post-notification allotment order. Therefore, appropriate deduction will have to be made from the price indicated by Exh.139 for the purpose of determining market value of the lands acquired in the instant cases. On the facts and in the circumstances of the case, this Court is of the opinion that interest of justice would be served if 30% is deducted from the price indicated by Exh.139 for the purpose of determining market value of the lands acquired in the instant case. So calculated, the claimants, in all, would be entitled to compensation at the rate of Rs.95/- per sq.mt. and not at the rate of Rs.120/- per sq.mt. as held by the Reference Court. Therefore, the appeals will have to be

accepted in part.

For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated April 19, 2004 rendered by the learned 3rd Joint Civil Judge (S.D.), Vadodara, in Land Reference Case Nos. 1503 to 1508, 1517 to 1544, 1546, 1596 to 1600 and 1605 of 1996 awarding compensation to the claimants at the rate of Rs.120/- per sq.mt. is hereby modified, and it is held that the claimants would be entitled to compensation at the rate of Rs.95/- per sq.mt. for their acquired lands. The other statutory benefits, which have been conferred by the impugned common award, are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL, J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)